



Testimony of

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Subcommittee on Railroads, Pipelines, and Hazardous Materials
of the
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"Rail Safety Legislation"

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Mr. Chairman, thank you for asking ACC to testify on a subject of great importance both to the chemistry sector I represent and the nation at large. And thank you too for this opportunity to share our members' views on H.R. 2095, the Federal Railroad Safety Improvement Act of 2007.

I am Marty Durbin, Managing Director of Federal Legislative Affairs with the American Chemistry Council ("ACC"). ACC is the trade association representing the companies that make the chemicals that are essential to the products that we need and use everyday. Our members are committed to the safe movement of our products, and we believe HR 2095 provides an important framework to spur continued improvement in safety performance throughout the chain of stakeholders responsible for transporting these critical materials. In particular, we support the provisions of the bill that seek to implement the recommendations of the National Transportation Safety Board.

Products supplied by the chemistry sector are essential in manufacturing, agriculture, energy, transportation, technology, communications, health, education, defense, and virtually every aspect of our lives. Basic industrial chemicals are the raw materials for thousands of other products including plastics, water treatment chemicals, detergents, pharmaceuticals and agricultural chemicals. These applications include medicines and medical technologies that save our lives, computers that expand our horizons, foods we eat, water we drink, cars we drive, homes in which we live, and clothes we wear.

Our \$635 billion dollar industry employs more than 850,000 people in all 50 states, and accounts for 10 percent of all US merchandise exports. In fact, more than 96% of all manufactured goods are directly touched by chemistry. The business of chemistry depends on the nation's railroads to deliver approximately 170 million tons of products each year, accounting for more than \$5 billion in annual railroad freight revenues, making chemicals the second-largest railroad commodity, behind only coal, in terms of volume, and third-largest revenue contributor to rail revenues, behind only coal and intermodal.

Chemicals – including those classified as hazardous chemicals – are essential for the life of the nation, and Congress wisely established a comprehensive, national hazardous material transportation system administered by the U.S. Department of Transportation (“DOT”). The goal of that system is to ensure that chemicals and other hazardous materials are delivered safely and reliably. The goal is not to prevent their movement to those customers who rely on them.

Turning specifically to the subject of today’s hearing, I want to emphasize that rail transportation is critical to ACC’s membership and to all of the industries and people who depend on us and our products. While there have been tragic hazardous materials rail incidents in the past few years, rail remains one of the safest means to ship hazardous materials. And ACC’s member companies are committed to continuous safety improvement – not only in the transportation of our products, but in all aspects of our business.

Through ACC’s Responsible Care® initiative, member companies are committed to a set of goals and guidelines that go above and beyond federal regulation on health, safety, security and the environment. Our commitment to continuous safety improvement naturally includes transportation.

Safety Requires a Holistic Approach

Hazardous materials transportation safety – *the avoidance of accidents and accidental releases of hazardous materials* – is a primary focus for ACC, our member companies, the broader chemistry sector, our transportation partners and the emergency responders with whom we work every day. Together, we have invested billions of dollars in training, systems, technology and tank car safety and we will continue to do so. A commitment to safety is good business.

Experience, engineering science and common sense teach us that for rail transportation, hazardous materials safety is the result of many interrelated factors including:

- Overall safety of rail operations, including track conditions and the condition of the associated rail infrastructure such as signaling (“dark territory”).
- Placement of tank cars within trains, and their coupling to other cars.
- Training, supervision and staffing of train crews and those responsible for loading and unloading materials to ensure operational safety.
- Ongoing inspections of equipment.
- Proper use of appropriate cars for the movement of specific hazardous materials.
- Design and construction of tank cars.

I would note that HR 2095 includes provisions for implementation of measures such as positive train control, warnings in non-signalized territory and enhanced requirements for track inspection. These proposed requirements, in addition to the bill’s treatment of concerns surrounding employee fatigue, have potential for significantly enhancing rail safety.

Collaboration – Key to Success

Safety performance improvements for hazardous materials rail shipments is a collaborative process that must involve all relevant stakeholders, including rail carriers, shippers, tank car suppliers and government.

ACC is pleased to hold a seat on the Tank Car Committee (“TCC”) of the Association of American Railroads (“AAR”). Among its many functions, TCC has a mandate from DOT to evaluate tank car design and specifications to address safety performance. Throughout its history ACC has found TCC to be an effective forum in which this

important risk-management factor has been addressed in a collaborative and purposeful manner. We are concerned, however, that recent actions by our rail partners could jeopardize this long history of successful collaboration.

Following last year's controversial decision by the TCC to approve a new tank car design – a decision opposed by all shipper representatives on the TCC – the Federal Railroad Administration expressed its concern that the committee had abandoned the consensus process that had “yielded so many significant improvements in the railroad transportation of hazardous materials.” ACC was encouraged by and grateful for FRA's leadership effort to bring all of the stakeholders back together under a collaborative approach toward a new tank car design. AAR wisely chose to delay implementation of its decision, thereby allowing a new tank car design to be considered through FRA with a federal rulemaking process. The rulemaking process is progressing on a positive path. Currently, initial inputs are being collected through a comprehensive test and analysis program. FRA has told the industry to expect a NPRM very soon. We look forward to continuing to collaborate with FRA to assure this rulemaking results in a sound regulation.

There are troubling signs, however, that this agreement to collaborate is in jeopardy. We are very concerned, for example, that one railroad has informed our members and others that it will revise its tariffs (freight rates) to “encourage” shippers to use a tank car that is not yet available – under the guise of improving safety. We are also surprised to see AAR's TCC once again pursuing new tank car designs for additional chemical products instead of working through the ongoing FRA rulemaking process.

Liability Concerns

ACC is aware that the railroads have developed a proposal to limit their liability resulting from hazardous materials incidents. While we agree it is not in our interest, or the nation's, for railroad companies to be put out of business due to unwarranted lawsuits, ACC has serious concerns with the proposal being circulated.

First, let me be clear that while ACC works with other organizations to restore balance and fairness to our civil justice system, we don't believe a party should be relieved of its appropriate liability for harms it has caused. Railroads, as well as hazardous materials shippers and other stakeholders should continue to bear liability for their own conduct. Lessening that responsibility would have undesirable consequences. Specifically, a system that shifts liability from the party at fault to other parties serves as a disincentive to improve safety.

Any decision to limit liability – should Congress find such a major change to be in the public interest – must involve the input of all relevant stakeholders in the rail transportation of hazardous materials. In addition, if it were to be decided by all parties that some form of limits need to be placed on liability, any resulting proposal must clearly distinguish between accidents and gross negligence and must be strongly tied to ongoing safety performance improvements. Therefore, ACC cannot support the narrow, one-sided liability proposal currently being circulated by the railroads.

An important related matter is the “common carrier obligation,” under which railroads are required to transport commodities – whether or not hazardous – for their customers. The Interstate Commerce Clause of the Constitution grants power to the Congress to write the laws that govern our nation's commerce. Congress recognized the common carrier obligation as the framework on which the entire national railroad transportation system was founded. [49 US Code, Subsection 11101(a).] And it remains crucial today. As part of their charter, railroads are permitted to operate in the public interest because the nation depends on safe and reliable service in the delivery of a wide range of products on which we all depend.

ACC – America's Chemical Resource and Partner

ACC and our member companies are proud to be both resources and partners to our communities, the railroads, local jurisdictions and the emergency response community.

In the 1980s, ACC members, the railroads and other stakeholders developed TRANSCAER[®] (**T**ransportation **C**ommunity Awareness **E**mergency **R**esponse), a voluntary national outreach effort that helps communities prepare for and respond to possible hazardous material transportation incidents.

TRANSCAER "sponsor" organizations provide monetary resources and in-kind contributions. TRANSCAER Sponsors and Partners include: American Chemistry Council, Association of American Railroads, Chemical Educational Foundation, CHEMTREC[®], National Tank Truck Carriers, Inc. and The Chlorine Institute. The U.S. Department of Energy, Environmental Management Office of Transportation is a TRANSCAER Partner. In 2005, TRANSCAER held over 200 events across the nation reaching over 8,500 attendees.

Emergency response is one of the most critical components of hazardous material transportation safety and security. Swift and appropriate response to accidents or other incidents will save lives not only of the public but of the responders themselves.

ACC's CHEMTREC (**C**hemical **T**ransportation **E**mergency **C**enter) program, now in its 36th year, provides a successful blueprint for sharing expertise and experience with today's emergency responders. Located at our headquarters in Arlington, CHEMTREC is recognized by DOT and other federal agencies as a valuable source of information and expert counsel regarding hazardous materials incidents. When a chemical incident takes place, responders contact CHEMTREC immediately to determine the best way to handle a wide range of hazardous substances including radioactive materials, infectious substances, biohazards, and hazardous waste. Our state-of-the-art emergency center is a 24/7 reminder of the commitment we make to enhance the safety of every hazardous material shipment, and the people whom it may affect.

I am pleased to report that CHEMTREC has been a behind-the-scenes partner to a variety of government organizations and programs including NASA and the U.S. Army. When chemical spills, leaks or other incidents are involved, CHEMTREC usually gets the call and links the responders with the experts who can help them contain, control and clean-up.

As a further improvement to CHEMTREC's capabilities, CSX Transportation and CHEMTREC have launched a program designed to provide even more information to emergency responders during a rail-related hazardous materials incident. The program provides CHEMTREC's staff of Emergency Service Specialists with direct access to CSXT's Network Operations Workstation (NOW). NOW is a secure system that uses a combination of technologies to graphically identify the location of a train anywhere on CSXT's 21,000- mile network. These tools provide CHEMTREC's staff with a web-based, visual display of the train and its location, the location of rail cars within the train, and the contents of each rail car.

As in my previous appearances before this committee, I'd like to extend an invitation to each of you to visit the CHEMTREC facility at our offices in Arlington, VA.

The Nation Needs a Safe and Reliable Rail System

The nation needs a safe and reliable system of hazardous material rail transportation, governed by uniform, national rules. The only way to ensure that this system continually improves is by considering all of the factors that effect rail safety and engaging all of the key stakeholders through a collaborative process.

In addition to testifying in support of HR 2095, we look forward to working closely with this Subcommittee, the Congress, the Department of Transportation and the other private-sector stakeholders to continuously enhance the safety of hazardous material rail transportation.

Thank you for allowing the American Chemistry Council to present its views to the Subcommittee. I would be glad to respond to answer any questions.

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